

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WESTERN SECTION

Case No. 3:05-cv-30109-MAP

JOANN PELLETIER,
Plaintiff

vs.

SANDRA T. TALBOT, CHITRA
PUBLICATIONS, CHARIOT
PUBLISHING, INC. As General Partner of
Chitra Publications, CHRISTIANE
MEUNIER, As Officer of Chariot
Publishing, Inc., CHRISTIANE
MEUNIER, As Owner of Chitra
Publications, and CHRISTIANE
MEUNIER d/b/a MOON OVER
MOUNTAIN,
Defendants

**MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiff, JoAnn Pelletier ("Plaintiff Pelletier"), respectfully submits this memorandum of law in support of her motion for a preliminary injunction whereby the Defendants, Sandra T. Talbot ("Defendant Talbot"), Chitra Publications, Chariot Publishing, Inc. as general partner of Chitra Publications, Christian Meunier as officer of Chariot Publishing, Inc., owner of Chitra Publications and d/b/a Moon Over Mountain collectively referred to as "Defendants", are enjoined from reproducing, distributing, and selling all past, present, and future copies of Plaintiff Pelletier's quilt design and quilt pattern. Plaintiff Pelletier requests that the Defendants Chitra, Chariot, and Meunier as officer of Chariot, owner of Chitra and d/b/a Moon Over Mountain, be ordered to produce a list of any and all individuals and entities who/which purchased any publication bearing plaintiff's Copyrighted Design and/or instructions for producing the Copyrighted Design, the number of publications purchased by each individual and entity, and the price paid for each

publication. Finally, Plaintiff Pelletier requests that the Defendants notify each purchaser of the publications of the correct identity of the author of the Copyrighted Design and Pattern.

PRELIMINARY STATEMENT

This action arises out of Defendants' willful and intentional, illegal reproduction, distribution, and sale of a unique quilt design ("Copyrighted Design") and of a quilt pattern for recreating the quilt design ("Copyrighted Pattern"), wherein both the Copyrighted Design and the Copyrighted Pattern, collectively referred to herein as the "Copyrighted Works" (See Exhibit A), were independently created by Plaintiff Pelletier. Despite Plaintiff Pelletier's direct notification to Defendant Talbot that the Copyrighted Works were for Defendant Talbot's personal use only, and were not to be reproduced for the benefit of third parties or to be distributed for sale to third parties, Defendant Talbot willfully and intentionally claimed authorship of and reproduced the Copyrighted Design and conveyed the reproduction to Defendant Chitra for publication in Defendant Chitra's periodicals. Furthermore, although Plaintiff Pelletier demanded that Defendants Chitra and Meunier cease and desist the publication and sale of the periodicals bearing a copy of the Copyrighted Design, Defendant Chitra, its general partner Defendant Chariot, and Defendant Meunier, as officer of Chariot, owner of Chitra, and d/b/a Moon Over Mountain, have willfully and intentionally continued to misrepresent the authorship in the Copyrighted Design and have continued to publish, distribute, and sell the copies. See Exhibits B and C. Additionally, without Plaintiff Pelletier's consent, Defendants Chitra, its general partner Defendant Chariot, and Defendant Meunier have willfully and intentionally reproduced and distributed the Copyrighted Pattern in their publications, making the Copyrighted Design available for reproduction and copy by third parties. See Exhibits B and C.

The Defendants have infringed upon Plaintiff Pelletier's Copyrighted Works. Additionally, Defendants Chitra, Chariot, and Meunier have and continue to intentionally misrepresent the true

authorship of the Copyrighted Works. The Defendants' conduct deceives the consuming public into wrongly believing that the Copyrighted Works originate with Defendant Talbot. The Defendants' actions are causing irreparable injury to Plaintiff Pelletier. Hence, Plaintiff Pelletier respectfully requests that this Court issue a preliminary injunction against the Defendants' reproduction and distribution of the Copyrighted Works and order the aforementioned relief. Support for this preliminary injunction is based on Plaintiff Pelletier's substantial likelihood of success on the merits of her claims against the Defendants, the irreparable harm that she will continue to suffer, and in the balancing of various equitable considerations.

STATEMENT OF FACTS

On or about January 21, 1993, Plaintiff Pelletier first published an original work of authorship consisting of a unique quilt design (the "Copyrighted Design") and a pattern for recreating the design (the "Copyrighted Pattern"), a copy of which are attached hereto as Exhibit A. The Copyrighted Design is a unique and original design derived from a log cabin, courthouse quilt design, an example and description of which is depicted in Exhibit D. On September 17, 2004, Plaintiff Pelletier complied in all respects with the requirements of the Copyright Act, and applied for and received from the Register of Copyrights Certificate of Registration No. VA 1-282-126 for the Copyrighted Design and for the Copyrighted Pattern ("Registered Copyright"), collectively referred to herein as the "Copyrighted Works". See Exhibit E, which shows a date-stamped copy of the U.S. Copyright application.

On or about January 21, 1993, Plaintiff Pelletier conducted a quilting class attended by Defendant Talbot. During the course of the class, Plaintiff Pelletier provided Defendant Talbot with the Copyrighted Pattern comprising visual and written instructions for reproducing the Copyrighted Design. On or about April, 2000, Plaintiff Pelletier taught a subsequent class of which Defendant Talbot was a student. At this class, Plaintiff Pelletier distributed and read a letter to the students.

The letter stated that any quilts expressly or derivatively reproduced from all teachings of Plaintiff Pelletier, including the Copyrighted Pattern, was for the individual students' personal use and enjoyment, and was not for public display or publication. See Exhibit F.

On or about April to September 2000, Defendant Talbot stated to Plaintiff Pelletier that Defendant Talbot was considering submitting the Copyrighted Pattern and the Copyrighted Design to Defendant Chitra Publications ("Defendant Chitra") for publication in one of Defendant Chitra's periodicals. As Plaintiff Pelletier was strongly against the submission by Defendant Talbot and the publication of her Registered Copyright in Defendant Chitra's publication, in September, 2000, Plaintiff Pelletier requested that Defendant Talbot no longer attend Plaintiff Pelletier's class.

Claiming the Copyrighted Pattern and the Copyrighted Design to be the direct result of her own creative endeavor and, hence, belonging exclusively to her, on or about September 2000, without Plaintiff Pelletier's authorization, Defendant Talbot submitted a quilt consisting of the Copyrighted Design under the title "Just Spooling Around" to Defendant Chitra, and gave Defendant Chitra permission to publish the quilt in Defendant Chitra's various quilting publications, wherein such publications improperly accredited Defendant Talbot with authorship and ownership status over the quilt.

On or about October 2003, without Plaintiff Pelletier's permission, Defendant Chitra published the Copyrighted Design under the title "Just Spooling Around", along with the Copyrighted Pattern, in the October/November 2003 issue of Defendant Chitra's "Quiltworks Today" magazine (the "Magazine"), wherein the Copyrighted Design and the Copyrighted Pattern appeared on pages 26-27 of the Magazine. Exhibit B.

On or about 2004, Defendant Chitra published the Copyrighted Design under the title "Just Spooling Around" and the Copyrighted Pattern in a paperback entitled "A Few of My Favorite Scrap Quilts" (the "Book"). Exhibit C. Additionally, the Copyrighted Design is featured on the

cover of the Book, on page 3 of the Book and the Copyrighted Pattern is duplicated in the Book at Pages 11 and 15; additionally, credit of authorship is improperly given to Defendant Talbot on Page 15 of the Book. Exhibit C.

Defendants Chitra and Meunier have published, distributed, and sold the Magazine and the Book over the Internet and in various retail stores located throughout the United States.

On or about September 2004, Plaintiff Pelletier phoned Defendant Chitra and indicated to an agent of Defendant Chitra that Plaintiff Pelletier was in fact the author and the owner of the Copyrighted Design and of the Copyrighted Pattern, and that she desired to have Defendant Talbot discredited from any claims of authorship in the Copyrighted Design and the Copyrighted Pattern. As a follow-up to Plaintiff Pelletier's communication with Defendant Chitra, Plaintiff Pelletier's legal counsel submitted a cease and desist letter to Defendant Chitra demanding the cessation of the distribution and sale of those publications containing pictures of Defendant Talbot's quilt design and/or instructions detailing how the quilt may be copied (Exhibit G).

Plaintiff Pelletier filed her original complaint against Defendant Talbot and Defendant Chitra on or about May 4, 2005 alleging copyright infringement, false designation of origin under the Lanham Act and unfair competition pursuant to M.G.L. c. 93A. This Court entered a default against Defendant Chitra on October 13, 2005 for failing to respond to the Plaintiff's Original Complaint. Defendant Chitra has yet to respond to the complaint.

Nevertheless, Defendants Chitra, Meunier, and Defendant Meunier d/b/a Moon Over Mountain, continue to publish, advertise, and to sell the Book and the Magazine for profit as evidenced by the following Web sites, which were last accessed on February 20, 2006:

http://www.bestwebbury.com/A_Few_of_My_Favorite_Scrap_Quilts;

<http://www.quiltersgilde.nl/Bieb/2005MrtNwB.html>; and

<http://www.quilttownusa.com/eshop/10browse.asp?category=Back+Issue>

<http://www.quiltsource.ca/qshtml/ch1/chlnew.html>;

<http://www.quiltbooksusa.com/subcatmfgprod.asp?0-+200&1=279&2> See Exhibit H.

ARGUMENT

A. Standard of Review

The First Circuit applies a four-pronged test to determine whether to grant a preliminary injunction. The party seeking relief must demonstrate: (1) irreparable injury if the injunction is not granted; (2) that such injury will outweigh any harm which the relief sought would inflict on the non-moving party; (3) a likelihood of success on the merits; and (4) no adverse impact on the public interest by granting the injunction. Auburn News Co., Inc. v. Providence Journal Co., 659 F.2d 273, 277 (1st Cir. 1981). “The court evaluates the moving party’s claim of injury together with its likelihood of success on the merits.... If the court discerns such a likelihood and also finds that a failure to issue the injunction would ‘subject the moving party to a substantial risk of irreparable harm,’ the court will weigh that risk against any similar risk of irreparable harm which the grant of injunctive relief would work upon the opposing party.” Al Cass, Inc. v. Cassinelli, No. 99-0103 (Worcester, Mass. Sup. Ct. 1999) (quoting Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980)).

The most critical factor is the “likelihood of success” component. Lancor v. Lebanon Housing Authority, 760 F.2d 361, 362 (1st Cir. 1985); Planned Parenthood League v. Bellotti, 641 F.2d 1006, 1009 (1st Cir. 1981). In actions involving private interests, the “public interest” factor is arguably the least important. See Continental Group v. Amoco Chemicals Corp., 614 F.2d 351, 357-58 (3rd Cir. 1980). It is not necessary to consider each element of the test independently of the other three. See Concrete Machinery Co. v. Classic Lawn Ornaments, Inc., 843 F.2d 600, 611 (1st Cir. 1988). Thus, if the “likelihood of success” weighs very strongly in the moving parties’ favor, the balancing of the harms exercise is less necessary. This process has been described as “...not two distinct tests, but rather the opposite ends of a single continuum in which the required showing of harm varies inversely with the required showing of meritoriousness.” Rodeo Collection Limited v. West Seven, 812 F.2d 1215, 1217 (9th Cir. 1987).

Because Plaintiff Pelletier can satisfy all four elements, she is entitled to an order for a preliminary injunction enjoining the Defendants from further reproduction, distribution, and sale of the Copyrighted Design and Copyrighted Pattern.

B. Plaintiff Pelletier is Likely to Succeed on the Merits of Her Copyright Infringement Claims.

a. Under 17 U.S.C. § 501(a), Defendant Talbot has infringed Plaintiff Pelletier's federally protected copyright.

Pursuant to 17 U.S.C. § 501(a), “anyone who violates any of the exclusive rights of the copyright owner . . . , is an infringer of the copyright or right of the author, as the case may be.” 17 U.S.C. § 501(a) (2003). The owner of a copyright under Title 17 has the exclusive right to do, and to authorize, reproduction of the copyrighted work in copies and to distribute copies of the copyrighted work to the public by sale or other transfer or ownership, or by rental, lease, or lending. 17 U.S.C. § 106 (1), (3) (2003).

To prevail on a claim of copyright infringement, a plaintiff must prove (1) ownership of a valid copyright, and (2) illicit copying of the protected work by the alleged infringer. Feist Pubs., Inc. v. Rural Tel. Serv. Co., 499 U.S. 340; Yankee Candle v. The Bridgewater Candle, 249 F.3d 25, 33 (1st Cir. 2001).

1. Plaintiff Pelletier owns a valid copyright in the Copyrighted Design.

To show ownership of a valid copyright, a plaintiff must prove that the plaintiff complied with applicable statutory formalities, and that the work as a whole is original. See CMM Cable Rep., Inc. v. Ocean Coast Properties, 97 F.3d 1504, 1513 (1st Cir. 1996); see also Lotus Development Corp. v. Borland Intern., 49 F.3d 807, 813 (1st Cir. 1995).

On September 17, 2004, Plaintiff Pelletier applied for and received from the Register of Copyrights Certificate of Registration No. VA 1-282-126 for the Copyrighted Design and for the Copyrighted Pattern (“Registered Copyright”). Exhibit E. As acknowledged by her receipt of a

registration number for the Registered Copyright, Plaintiff Pelletier has complied with the applicable statutory formalities.

Additionally, Plaintiff Pelletier's Registered Copyright as a whole is original.

Original ... means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity. To be sure, the requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, 'no matter how crude, humble or obvious' it might be.

Feist Publications, Inc., 499 U.S. at 345.

Plaintiff Pelletier independently created the Copyrighted Design based on a traditional log cabin, courthouse quilt pattern. As shown in Exhibit D, this traditional pattern consists of log cabin blocks that are pieced so that the logs form the steps leading to the center blocks which represent the courthouse. Plaintiff Pelletier's Copyrighted Design utilizes this basic traditional pattern to create artfully patterned spools of thread, wherein each spool of thread is separated from the adjacent spool of thread by white sashes with dark cornerstones at each corner. See Exhibit A. Plaintiff Pelletier selectively chose to configure each spool with three layers of "steps" at each of the ends of the spool and to position the sashes, cornerstones, and spools to form a pleasing icosikaioctagon between adjacent spools. The overall effect of Plaintiff Pelletier's creative intelligence in integrating the appearance of spools of thread into the traditional quilt pattern is an artful pattern expression showing sufficient creativity to establish originality in the Copyrighted Design.

For these reasons, then, Plaintiff Pelletier has established ownership of a valid copyright in the Copyrighted Design.

2. Defendant Talbot illicitly copied the Copyrighted Design.

To establish whether a defendant has illicitly copied a protectible element of expression, a plaintiff must prove, either through direct or indirect evidence, that the defendant copied the

plaintiff's copyrighted work. Yankee Candle, 259 F.3d at 33 (citing Segrets, Inc. v. Gillman Knitwear Co., 207 F.3d 56, 60 (1st Cir. 2000)). Second, "the plaintiff must prove that the copying of the copyrighted material was so extensive that it rendered the infringing and copyrighted works 'substantially similar.'" Id. (quoting Segrets, Inc., 207 F.3d at 60).

(a) Defendant Talbot copied the Copyrighted Pattern.

A plaintiff may prove copying either through direct or indirect evidence. Segrets, Inc., 207 F.3d at 60. Indirect evidence of copying includes evidence that defendant had access to the plaintiff's work and that the works are similar enough to support an inference that the defendant copied the plaintiff's work. Streetwise Maps, Inc. v. VanDam, Inc., 159 F.3d 739, 747 (2d Cir. 1998).

(1) Defendant Talbot had access to the Copyrighted Design.

In 1993, Defendant Talbot attended several quilting classes conducted by Plaintiff Pelletier. During the course of one of the classes in which Defendant Talbot was in attendance, Plaintiff Pelletier disclosed her Copyrighted Design and Copyrighted Pattern as a class project in which each student was authorized to reproduce the Copyrighted Design for the students' sole and exclusive enjoyment. See Exhibit F. As Defendant Talbot was in attendance during Plaintiff Pelletier's disclosure of the Copyrighted Design she had direct visual access to the Copyrighted Design. Additionally, as Plaintiff Pelletier personally handed Defendant Talbot a copy of the Copyrighted Pattern which provided written and illustrated instructions for reproducing the Copyrighted Design, Defendant Talbot had immediate access to the mode for reproducing the Copyrighted Pattern. Furthermore, as part of the class project, the students, including Defendant Talbot, were encouraged to reproduce the Copyrighted Pattern for their exclusive enjoyment, and in fact did so at Plaintiff Pelletier's assistance and instruction. Accordingly, Defendant Talbot not only had access to the Copyrighted Design, but also had the detailed instructions for replicating the Copyrighted Design,

and did so as part of a class project.

(2) Defendant Talbot's quilt design is similar enough in appearance to the Copyrighted Design to support an inference that Defendant Talbot copied Plaintiff Pelletier's Copyrighted Design.

In Streetwise Maps, Inc. v. VanDam, Inc., the Second Circuit Court of Appeals, stated that "similarity" relates to the entire work, not just to the protectible elements. Streetwise Maps, Inc., 159 F.3d 739, 747 (2nd Cir. 1998).

Comparing Plaintiff Pelletier's quilt design with that of Defendant Talbot's, an ordinary, reasonable observer would conclude that the two quilt designs are nearly identical. Comparing the Copyrighted Design, as shown in Exhibit A, with Defendant Talbot's quilt design, as shown in Exhibit I, the following similarities are noted. Both quilts comprise rows and columns of spools of thread spun from a traditional log cabin, courthouse style design. The fabric forming the threaded portion was chosen from a wide array of colors and patterns including solids, plaids, checks, and stripes. Additionally, both quilts form the spool using three "steps" on both ends of the spool. Also, both quilts use similarly colored sashes to create a background contrast to the spools of thread such that the spools stand out. Both quilts further use cornerstones to create a visual separation between the adjacent sashes and between the adjacent spools.

Using these identical elements in a nearly identical fashion, the two quilts are sufficiently similar in appearance to give rise to the reasonable inference that Defendant Talbot copied Plaintiff Pelletier's Copyrighted Design.

For these reasons, then, Plaintiff Pelletier has established that Defendant Talbot copied the Copyrighted Design.

(b) Defendant Talbot's copying of the Copyrighted Design was so extensive that it rendered the infringing quilt and the Copyrighted Design "substantially similar".

Whether there is substantial similarity between copyrightable expressions is determined by the “ordinary observer” test. Concrete Mach. Co., 843 F.2d at 607. “The test is whether the accused work is so similar to the plaintiff’s work that an ordinary reasonable person would conclude that the defendant unlawfully appropriated the plaintiff’s protected expression by taking material of substance and value.” Id. (quoting Educ. Testing Servs. v. Katzman, 793 F.2d 533, 541 (3d Cir. 1986)).

However, only the “protected expression” is relevant to an evaluation of substantial similarity. Yankee Hill, 259 F.3d at 33. That is, “substantial similarity” refers only to the expression of the artist’s concept, not to the underlying idea itself. Accordingly, a plaintiff must demonstrate that an allegedly infringing defendant’s works are substantially similar to the plaintiff’s original expression of an idea. Concrete Machinery, 843 F.2d at 606. Accordingly, it must first be determined to what extent the Copyrighted Design is protected expression. In determining those aspects of the Copyrighted Design that is protected under copyright law, the work is first dissected to remove those aspects not protected by copyright. Yankee Hill, 259 F.2d at 34. Once the unprotected elements are removed from consideration, the protected elements are analyzed to determine if a reasonable person could conclude that the allegedly infringing work is “substantially similar” to the allegedly infringed work. Id. at 37.

(1) Protected elements in the Copyrighted Work.

Protected expression includes that element(s) that gives the work its originality. Protected elements include those elements over which an author exercised discretion. Concrete Machinery, 843 F.2d at 607. For example, where the copyrighted work was a photograph of an object typically found in nature, an author’s choices as to lighting, background, angle, and positioning were considered protected elements. Yankee Candle, 259 F.3d at 36-37.

In the present case, Plaintiff Pelletier's Copyrighted Design employs numerous protected elements. Among these elements are: (1) a variety of colored and patterned fabrics to portray the thread portion of the spool of thread; (2) spools comprising three steps on each end; (3) light colored sashes to produce a background contrasting with the spools; and (4) dark colored cornerstones spaced at regular intervals between the spools to give the spools a blocked effect, i.e., to make it appear as though each spool is in its own individual cell.

As these elements are considered to confer, at least in part, originality onto the Copyrighted Design, these elements, considered as a whole, must be compared with Defendant Talbot's quilt design to determine whether the two designs are substantially similar. See Matthews v. Freedman, 157 F.3d 25, 28 (1st Cir. 1998) (court stating: "[w]e do not mean to suggest that every element in copyrighted work must be considered apart from all others; a collection of protectible elements may seem substantially similar primarily through the overall impression created by those protectible elements taken together. Cf. Knitwaves, Inc. v. Lollytogs Ltd., 71 F.3d 996, 1003-04 (2nd Cir. 1995)).

(2) **Defendant Talbot's elements are substantially similar to the Copyrighted Design's protectible copyright elements such that Defendant Talbot's quilt design infringes Plaintiff Pelletier's Copyrighted Design.**

As previously stated, whether there is substantial similarity between copyrightable expression is determined by the "ordinary observer" test. Concrete Machinery, 843 F.2d at 607. "The test is whether the accused work is so similar to the plaintiff's work that an ordinary reasonable person would conclude that the defendant unlawfully appropriated the plaintiff's protected expression by taking material of substance and value." Id. (quoting Educ. Testing Servs., 793 F.2d at 541). However, where the plaintiff's work incorporates elements from the public domain, "[w]hat must be shown is substantial similarity between those elements, and only those

elements, that provide copyrightability to the allegedly infringed compilation.” Key Publ’ns. Inc. v. Chinatown Today Publ’g Enters., Inc., 945 F.2d 509, 514 (2d Cir. 1991). As Plaintiff Pelletier’s Copyrighted Design is derived from a well-known traditional log cabin, courthouse quilt pattern, the underlying fundamental log cabin, courthouse quilt pattern is not considered in the infringement analysis. Rather, it is Plaintiff Pelletier’s original use of this public domain pattern, which has resulted in the creation of an original quilt design comprising a colorful visual art display of threaded spools, which is considered.

A side by side comparison of some of the protectible elements found in the two quilt designs is provided. Included among the common ornamental features found in both quit designs are:

- Spools of thread formed as the main feature of the quilt using a traditional log cabin, courthouse pattern.
- Each of the two opposite ends of each spool of thread depicted in the two quilts consists of three steps.
- Both quilts utilize multi-colored and multi-patterned fabrics for the thread portion of the spool of thread. The patterns of the fabrics include solids, checks, plaids, horizontal stripes, and vertical stripes.
- Both quilts include dark square cornerstones evenly spaced throughout the quilt on both the proximal and distal top and bottom ends of the spools of thread.
- Both quilts include a light colored sashing disposed between sequential cornerstones and between sequential spools of thread.
- Both quilts utilize the cornerstone, sashing, and spools to create a lightly colored icosikaioctagon evenly disposed between the alternating spools of thread.
- Both quilts comprise an outer border.

Defendant Talbot’s quilt design and the Copyrighted Design differ in the following minor respects:

- Cornerstones and sashes are positioned along the four outer perimeters of the Copyrighted Design; whereas, in Defendant Talbot’s quilt design, no cornerstones and sashing are used along the outer perimeters such that the spools border the outer border.

- Defendant Talbot's quilt design consists of only a single wide dark border; whereas the Copyrighted Design consists of a relatively wide dark outer border and a relatively thin lighter inner border.
- The Copyrighted Design consists of 96 spools of thread arranged in a 8X12 pattern; whereas Defendant Talbot's quilt design consists of 100 spools of thread arranged in a 10X10 pattern.
- Though having a substantially similar overall look and feel, the actual fabrics chosen for the thread portion of the quilt design are not identical in the two quilts.

The differences between the two quilt designs are de minimus. With regards to the use of borders, an ordinary observer would likely dismiss such a difference as the focus of the quilts is not on the border elements, but rather, on the spools of thread. That is, both quilts utilize light colored sashing and cornerstones to make the colorful spools of thread stand out and catch an observer's attention. The border, then, appears to serve the utilitarian function of providing an abrupt termination to the design itself.

With regards to the number of threaded spools used in the two quilts, and the fact that Defendant Talbot's quilt design arranges the spools in a 10X10 pattern rather than a 8X12 pattern, although the specific number of spools, and the number of rows and columns differs slightly, the effect upon an ordinary observer is the same. That is, when viewing the two quilts, the ordinary observer will not be impressed by the slight variation in number, but with the overall combined effect of the colorful spools of thread in association with the sashing and cornerstones. Additionally, as has already been discussed, both quilts are derived from the traditional log cabin, courthouse quilt design, wherein such a traditional design may consist, depending on the size of the quilt, of any number of rows and/or columns. Therefore, in large part, what makes the Copyrighted Design original, and hence copyrightable, is the integration of threaded spools into the traditional design. Accordingly, what the ordinary observer will most appreciate between the Copyrighted Design and Defendant Talbot's design is the substantial similarity in the configuration and appearance of the threaded spools coupled with the contrasting sashing and cornerstones along with

the fact that each row and column comprises a continuous series of evenly spaced threaded spools, not the fact that the two quilts differ by Defendant Talbot's omission of only four threaded spools from the overall design.

With regards to the colors and patterns of the fabrics used to create the threaded portion of the threaded spools, it is immaterial for copyright protection purposes that the two quilts may not use identical fabric patterns. Rather, what is important is that both quilts utilize a wide range of fabrics of varying colors and patterns, wherein the patterns include solids, checks, plaids, and stripes. That is, a reasonable observer of the two quilts will not focus in on the specific fabric patterns used, but rather, on the fact that both quilts utilize the same types of fabric patterns to convey a certain whimsical appearance to the quilts. That is, by using a wide range of colors and patterns in a seemingly random manner, both quilts emote an identical overall appearance and feeling.

Accordingly, the similarities between the two quilts far outweigh the differences. That is, a reasonable person viewing the two quilts would likely conclude that Defendant Talbot misappropriated those elements that created authenticity and originality in Plaintiff Pelletier's Copyrighted Design and improperly utilized those elements in forming her own quilt design. As the protected elements in Defendant Talbot's quilt are substantially similar to the protected elements in Plaintiff Pelletier's Copyrighted Design, Defendant Talbot infringes Plaintiff Pelletier's Copyrighted Design.

b. Plaintiff Pelletier's likelihood of success on the merits of her copyright claim against Defendants Chitra Publications, its general partner, Chariot Publishing, Inc., and Christiane Meunier as officer of Chariot and owner of Chitra Publications and d/b/a Moon Over Mountain.

17 U.S.C. § 106 precludes a party from the unauthorized reproduction or distribution of copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The Copyright Act further provides that "anyone who violates any of the

exclusive rights of the copyright owner . . . is an infringer of the copyright.” 17 U.S.C. § 501(a) (2001); Cable/Home Communication Corp., 902 F.2d at 843 (“[p]ublic distribution of a copyrighted work is a right reserved to the copyright owner, and usurpation of that right constitutes infringement.”); 2 Nimmer & Nimmer, supra, § 8.11[A]. Thus, if a defendant distributed copies of a plaintiff’s copyrighted work, the act of distribution is a direct infringement itself. Ortiz-Gonzales v. Fonovisa, 277 F.3d 59, 62 (1st Cir. 2002).

The following allegations from the Plaintiff’s Original Complaint are deemed admitted against Chitra Publications, Inc. by virtue of its failure to respond to the Plaintiff’s Original Complaint and entry of default. See Hernandez v. Sony, 66 U.S.P.Q. 2d 1143 (2003), citing Quirindongo Pacheco v. Rolon Morales, 953 F.2d 15, 16 (1st Cir. 1992). Defendant Chitra published pictures of Defendant Talbot’s quilt design along with detailed instructions for reproducing the infringing quilt design in various publications including a magazine entitled “Quilt Works Today” (Exhibit B) and a book entitled “A Few of My Favorite Scrap Quilts” (Exhibit C). Without first obtaining Plaintiff Pelletier’s permission, Defendant Chitra distributed and sold its publications over the Internet and to various retailers throughout the United States. Furthermore, despite receiving notification from Plaintiff Pelletier calling into question the legitimacy of Defendant Talbot’s authorship of the published quilt, and receiving a cease and desist letter from Plaintiff Pelletier’s legal counsel, Defendant Chitra continued to publish copies of Defendant Talbot’s quilt design, to post these copies on the Internet, to distribute them to retailers across the United States, and to offer these publications for sale over the Internet, and at various retail stores and trade shows.

Defendant Talbot submitted her quilt designed from the Copyrighted Design and entitled “Just Spooling Around” to Defendant Chitra for publication. Defendant published pictures of Defendant Talbot’s quilt design along with detailed instructions for reproducing the infringing quilt

design in various publications including a magazine entitled “Quiltworks Today” (Exhibit B) and a book entitled “A Few of My Favorite Scrap Quilts” (Exhibit C). Without first obtaining Plaintiff Pelletier’s permission, Defendant Chitra distributed and sold its publications over the Internet and to various retailers throughout the United States. Furthermore, despite receiving notification from Plaintiff Pelletier calling into question the legitimacy of Defendant Talbot’s authorship of the published quilt, and receiving a cease and desist letter from Plaintiff Pelletier’s legal counsel, Defendant Chitra continued to publish copies of Defendant Talbot’s quilt design, to post these copies on the Internet, to distribute them to retailers across the United States, and to offer these publications for sale over the Internet, and at various retail stores and tradeshow.

As Defendant Talbot’s quilt design infringes Plaintiff Pelletier’s Copyrighted Design, Defendant Chitra’s and Meunier’s d/b/a Moon Over Mountain’s direct, identical copying and distribution of Defendant Talbot’s infringing quilt design constitute copyright infringement. Additionally, Defendant Chitra’s and Defendant Meunier’s d/b/a Moon Over Mountain publication of instructions detailing the reproduction of the infringing quilt design encourages third parties to infringe upon Plaintiff Pelletier’s Copyrighted Design.

C. Plaintiff Pelletier will be irreparably harmed unless the Defendants are enjoined.

Irreparable harm is presumed if likelihood of success on the copyright claim has been shown. Concrete Machinery, 843 F.2d at 611. Accordingly, there is no need to actually prove irreparable harm when seeking an injunction against copyright infringement. Id. at 612. As Plaintiff Pelletier is likely to succeed on her copyright infringement claims against the Defendants, Plaintiff Pelletier is presumed to be irreparably harmed unless the Defendants are enjoined.

D. The Issuance of an Injunction is in the Public Interest.

The issue of public policy rarely is a genuine issue if the copyright owner has established a likelihood of success.

Since Congress has elected to grant certain exclusive rights to the owner of a copyright it is virtually axiomatic that the public interest can only be served by upholding copyright protections and, correspondingly, preventing the misappropriation of the skills, creative energies, and resources which are invested in the protected work.

Concrete Machinery, 843 F.2d at 612 (quoting Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d at 1255 (3rd Cir. 1983) (quoting Klitzner Industries, Inc. v. H.K. James & Co., 535 F.Supp. 1249, 1259-60 (E.D.Pa. 1982))). Accordingly, as it is in the public's interest to protect copyrights from infringement, the issuance of a preliminary injunction is also in the public's interest.

E. Balancing the Hardships Favors Plaintiff Pelletier.

The balance of hardships should be considered in light of the plaintiff's likelihood of success. Concrete Machinery, 843 F.2d at 613.

If a strong likelihood of success is demonstrated, then the court should issue the injunction even if the defendant will incur the relatively greater burden; a probable infringer simply should not be allowed to continue to profit from its continuing illegality at the copyright owner's expense. On the other hand, if [the plaintiff] shows only a slightly greater chance of succeeding than failing on the merits, and the balance of hardships otherwise weighs in favor of [the defendant], the court should not force the defendant to suffer prior to a final determination on the allegations, and no injunction should ensue. Id.

In balancing the hardships to be faced by an allegedly infringing defendant in a copyright infringement case, lost profits suffered by the defendant as a result of the preliminary injunction should be given little weight. Concrete Machinery, 843 F.2d at 612 (citing Helene Curtis Industries v. Church & Dwight Co., Inc., 560 F.2d 1325, 1333 (7th Cir. 1977), cert. denied, 434 U.S. 1070, 98 S.Ct. 1252, 55 L.Ed.2d 772 (1978) (court stating that where the only hardship that the defendant will suffer is lost profits from an activity which has been shown likely to be infringing, such an argument in defense merits little equitable consideration.)). "Advantages built upon a deliberately plagiarized make-up do not seem to us to give the borrower any standing to complain that his vested interests will be disturbed." My-T Fine Corp. v. Samuels, 69 F.2d 76, 78 (2nd Cir. 1934). "Such considerations apply even to a business which is exclusively based on an infringing activity and which would be virtually destroyed by a preliminary injunction." Concrete Machinery, 843 F.2d at 612.

In the present case, Plaintiff Pelletier has demonstrated a strong likelihood of success on her copyright claims against the Defendants. Additionally, should the preliminary injunction issue against Defendant Talbot, she will not stand to be significantly harmed in any relevant manner. Rather, Defendant Talbot will be enjoined from further reproducing the Copyrighted Design and from distributing it to other parties – such an injunction will in no way impair Defendant Talbot's livelihood or credibility.

Furthermore, although Defendants Chitra, Chariot and Meunier may suffer some economic harm as a result of the issuance and enforcement of the preliminary injunction, all such economic harm is invariably a direct result of their infringement of Plaintiff Pelletier's Copyrighted Works, and as such, is of no consequence to the Court when balancing the hardship to an allegedly infringing defendant. The preliminary injunction would only necessitate the removal of those publications bearing the Copyrighted Design and/or Copyrighted Pattern from Web sites, retailers, distributors, and other points of sale. Defendant Chitra, Chariot, and Meunier d/b/a Moon Over Mountain may, however, continue to promote and sell those publications that do not bear the Copyrighted Design and/or Pattern. Accordingly, Defendants Chitra, Chariot and Meunier will only suffer lost profits from the sale of those publications bearing the Copyrighted Works.

CONCLUSION

Wherefore, for the reasons stated above, the Plaintiff Pelletier, respectfully requests that this Honorable Court issue a preliminary injunction against all Defendants prohibiting them from reproducing, distributing, and selling all past, present, and future copies of Plaintiff Pelletier's quilt design and quilt pattern, and order Defendants Chitra, and Meunier d/b/a Moon Over Mountain to produce a list of any and all individuals and entities who/which purchased any publication bearing Plaintiff's Copyrighted Design and/or instructions for producing the Copyrighted Design, the number of publications purchased by each individual and entity, and the price paid for each

publication. The Plaintiff also requests that the Defendants notify each purchaser of the publication of the correct identity of the author of the Copyrighted Design and Pattern.

THE PLAINTIFF,
JoAnn Pelletier

/s/ Claire L. Thompson

By _____
Claire L. Thompson, Esq.
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& Murphy, P.C.
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Springfield, MA 01144
Telephone: (413) 733-3111
Telecopier: (413) 734-3910
BBO Number 550262

Jo Ann Pelletier designs



"sew" many SPOOLS

#101

46" x 66" finished quilt

These SPOOLS are "courthouse step" log cabin blocks. The blocks finish $3\frac{3}{4}$ " square and are made with logs that finish $\frac{1}{4}$ " wide. You'll be successful (making these small logs) by following the instructions carefully. Very "UNIQUE"!

MATERIALS NEEDED:

- THREAD "CENTER" - 96 ($2\frac{3}{4}$ " squares)
plaids, strips or prints
SPOOLS - 20 (more or less) brown print "fat eighth" (a fat eighth measures 9" x 22")
BACKGROUND muslin - $3\frac{1}{4}$ yards (used in "spool" block and for SASHING)
CORNERSTONES - 117, $1\frac{1}{2}$ " squares cut from 20 (more or less) black prints
BORDER 1 (red) - $\frac{1}{3}$ yard
BORDER 2 (black print) - $\frac{3}{4}$ yard
BINDING (black) - $\frac{3}{4}$ yard
BACKING & BATTING - 49" x 69"

Jo Ann Pelletier designs

P O Box 60732

Longmeadow MA 01116

413 567-7146



"sew" many SPOOLS

#101



© 1993 Jo Ann Pelletier

All rights reserved. No part of this pattern may be reproduced or photocopied in any form without prior written consent. All finished items are protected by copyright and may not be reproduced for any commercial use. Federal copyright laws protect all of the above.

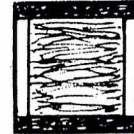
This pattern is intended for your personal use only.

© 1993 Jo Ann Pelletier

CONSTRUCTION - all seams are sewn with "scant" 1/4" seams. This is **very important**. If your seam allowance is too wide, the block will not measure the correct size. You will check the size of the block **AFTER** each "ROUND" (see at end of step 1 how to do this).

STEP 1 - "ROUND 1"

to the 2 3/4" square "**THREAD center**", add logs #1
(3/4" x 2 3/4" background fabric) to EACH SIDE.
Press towards the logs.
then add #2 logs (3/4" x 3 1/4" spool fabric)
and press towards the logs.

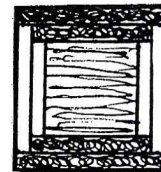


IMPORTANT - check the size of the block with your "square ruler".
The block should measure 3 1/4" sq. Trim if necessary to get rid of any excess over 3 1/4" sq. If the block measures less than the correct size, your **seams** are too wide.

- **ROUND 1 = 3 1/4" SQUARE** -

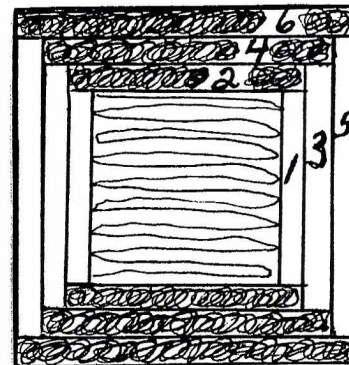
STEP 2 -

Add logs #3 - (3/4" x 3 1/4" background fabric), press
Add logs #4 (3/4" x 3 3/4" spool fabric), press
ROUND 2 = 3 3/4" square



STEP 3 -

Add logs #5 (3/4" x 3 3/4" background fabric), press
Add logs #6 (3/4" x 4 1/4" spool fabric), press
ROUND 3 = 4 1/4" square



ASSEMBLY -

Lay the blocks down - 8 rows across x 12 rows down as the diagram below shows. Leave a space and place the SASHING (1 1/2" x 4 1/4" strips) and the 1 1/2" CORNERSTONE blocks as pictured.

Stitch together by rows -

ROW 1 - CORNERSTONES & SASHING, press to sashing.

ROW 2 - SASHING & "SPOOL" block, press to sashing.

Continue till rows are done.

Stitch the ROWS together.

BORDER 1 - cut 2 of the strips to fit top and bottom of quilt - should be about 39 1/2" (check the size of your quilt top). Stitch, press toward outside. Stitch the 4 remaining strips together - measure, cut and add to sides (should be about 60"). Press

BORDER 2 - Top and bottom of quilt should be about 41" wide (remember, check to see what yours actually measures).. Cut 2 border strips to fit (or piece strips together if needed). Stitch and press. Stitch the 4 remaining strips together - measure, cut and add to sides (should be about 66"). Press

FINISHING - Layer top, batting & backing.

Quilt or tie.

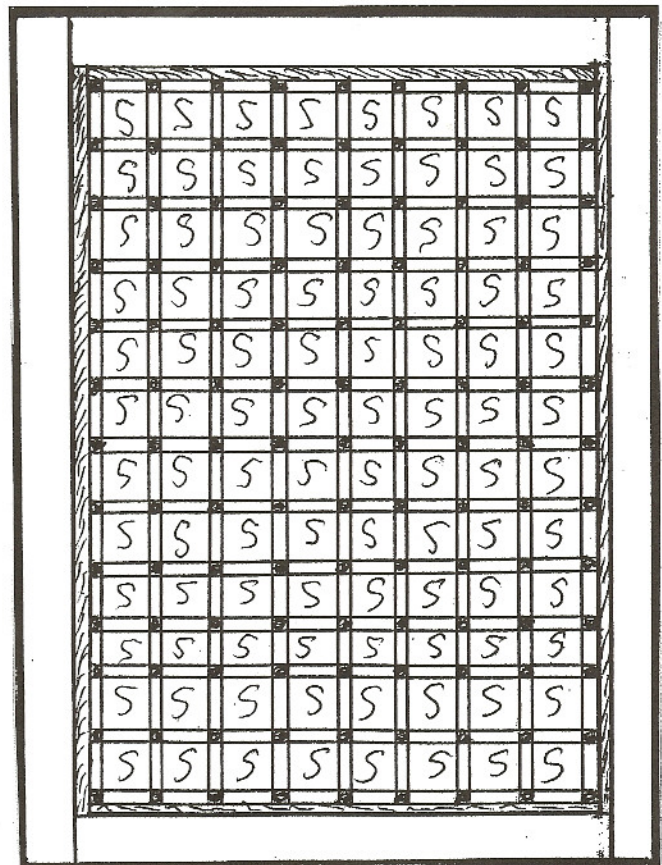
(recommendation -
"stitch in the ditch"
quilting)

Add binding

Thank you for purchasing my pattern.
I hope you enjoyed the process of
making this "very UNIQUE" quilt.

Jo Ann Pelletier

©1993 Jo Ann Pelletier - all rights reserved



"sew" many SPOOLS

© 1993 Jo Ann Pelletier - all rights reserved

Please read all instructions carefully.

The **SPOOLS** are "courthouse step" log cabin blocks.
 Finished block size is 3 3/4" square (4 1/4" including 1/4" seams).
 You will be making 96 "spools" blocks - 8 across x 12 down.
 "Scant" 1/4" seams are very important.

CUT -

THREAD "center" - various plaids, strips, or prints
 Cut 96, 2 3/4" squares

LOGS - all "logs" are cut 3/4" wide

BACKGROUND/muslin logs - amounts are for entire quilt

- #1 log = 3/4" wide x 2 3/4" long - CUT 192
- #3 log = 3/4" wide x 3 1/4" long - CUT 192
- #5 log = 3/4" wide x 3 3/4" long - CUT 192

SPOOL logs - for EACH block cut the following -
 cut 2 of EACH of log #2, #4, #6 (for each block).
 Remember, there are 96 blocks.

- #2 log = 3/4" wide x 3 1/4" long - CUT 2
- #4 log = 3/4" wide x 3 3/4" long - CUT 2
- #6 log = 3/4" wide x 4 1/4" long - CUT 2

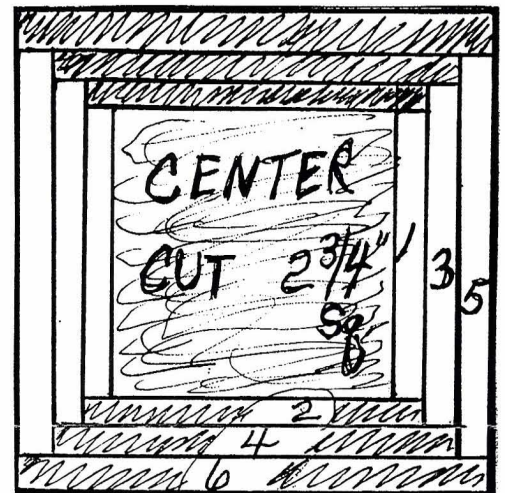
SASHING/muslin - cut 212 (total amount needed)
 Cut 1 1/2" wide x 4 1/4" long

CORNERSTONES - various black prints
 Cut 117, 1 1/2" squares

BORDER 1 - CUT 6, 1 1/4" x 40" strips (or width of fabric selvage to selvage)

BORDER 2 - CUT 6, 3 1/4" x 40" strips (or width of fabric selvage to selvage)

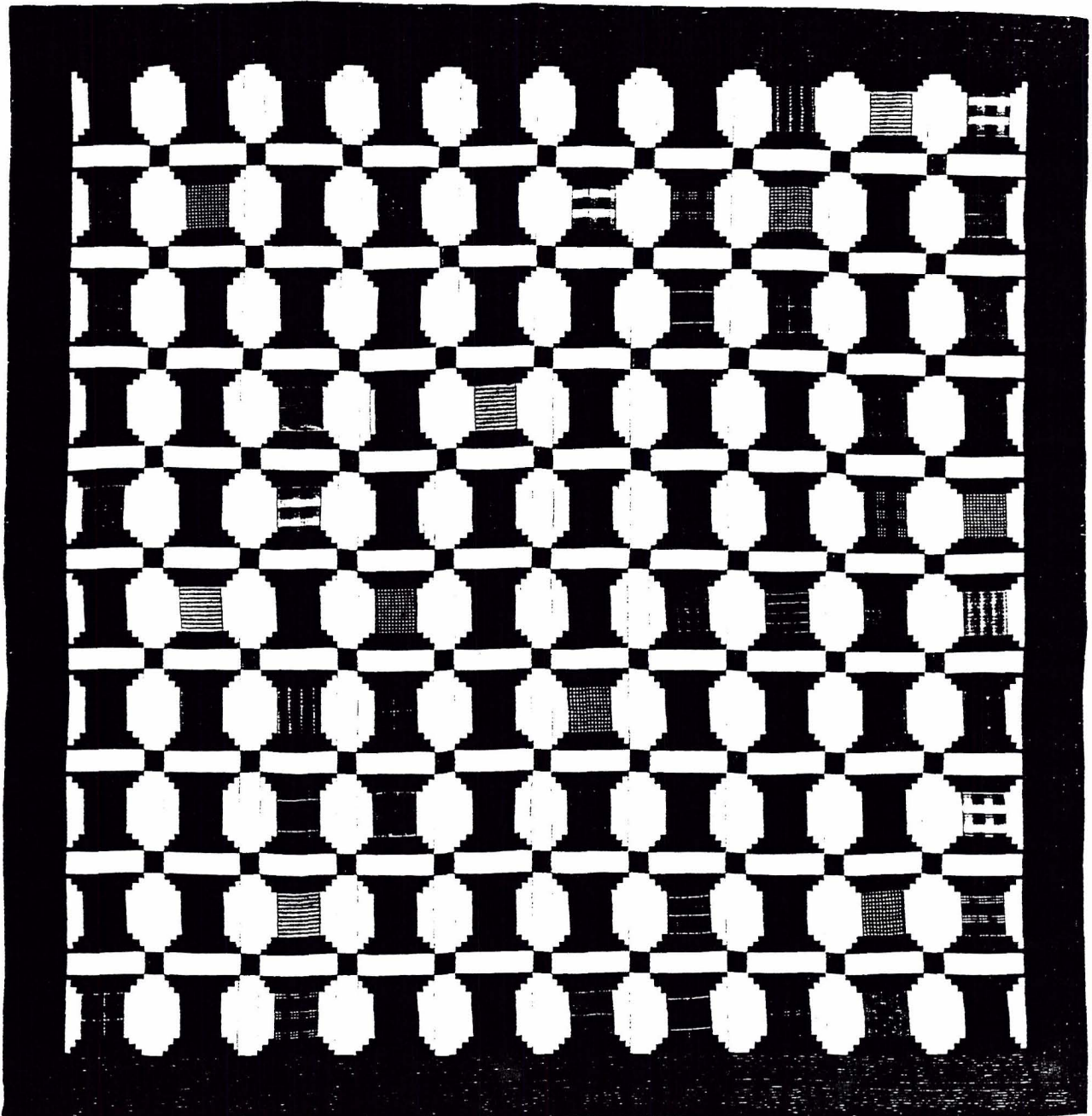
BINDING - CUT 6, 2 1/2" x 40" strips (or width of fabric selvage to selvage)



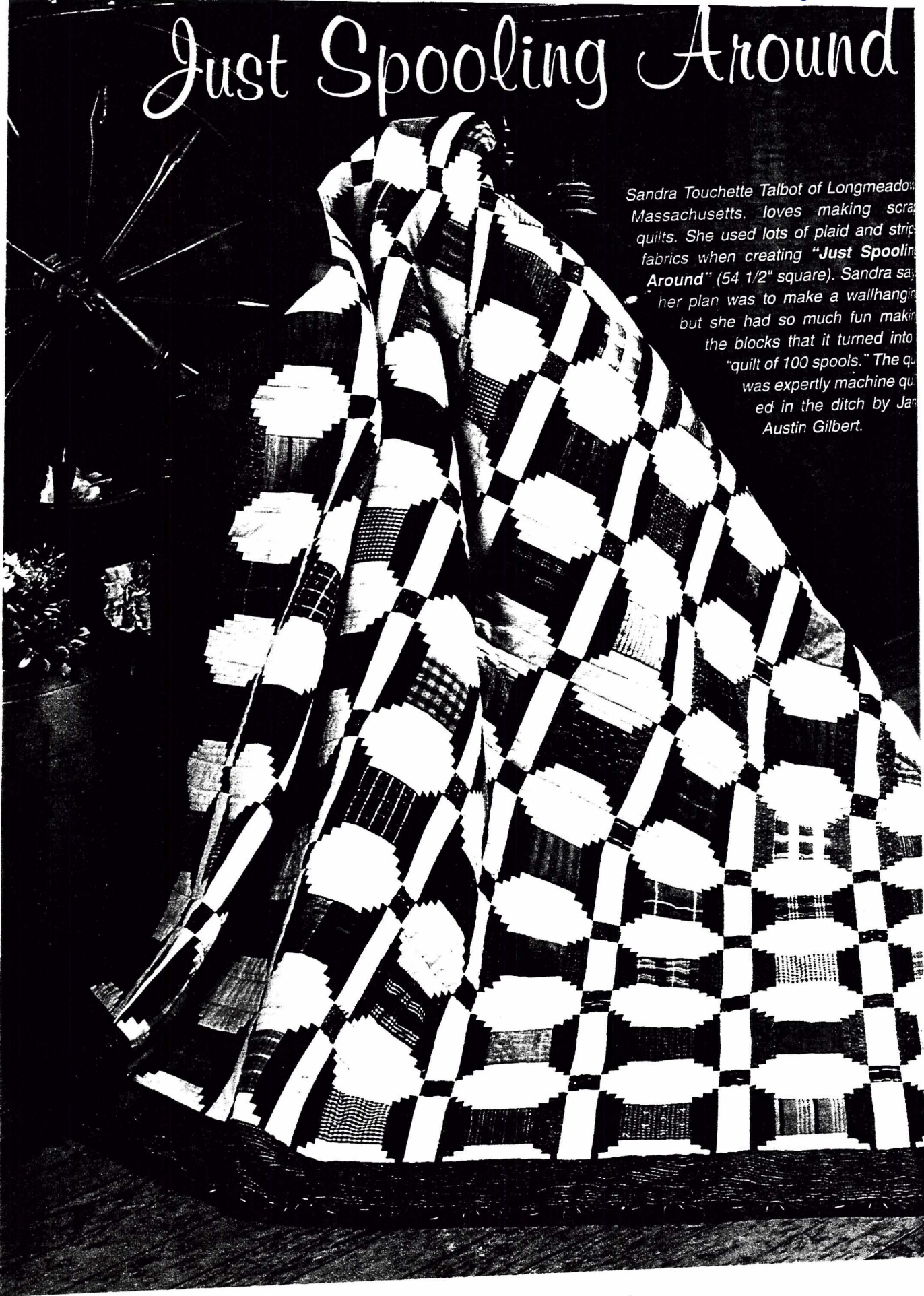


Just Spooling Around

Sandra Touchette Talbot of Longmeadow, Massachusetts, loves making scrap quilts. She used lots of plaid and stripe fabrics when creating "Just Spooling Around." Sandra says her plan was to make a wallhanging but she had so much fun making the blocks that it turned into a "quilt of 100 spools." The quilt was expertly machine quilted by Janis Austin Gilbert.



Just Spooling Around



Sandra Touchette Talbot of Longmeadow, Massachusetts, loves making scrappy quilts. She used lots of plaid and striped fabrics when creating "Just Spooling Around" (54 1/2" square). Sandra says her plan was to make a wallhanging but she had so much fun making the blocks that it turned into a "quilt of 100 spools." The quilt was expertly machine quilted in the ditch by Jan Austin Gilbert.



Sandra Talbot

Quilt Size: 54 1/2" square

Block Size: 4" square



Yardage is based on fabric with a useable width of 40".

- 100 assorted prints, plaids, and stripes, each at least 3" square
- 25 brown prints, each at least 10" square
- 21 assorted black prints each at least 3" square
- 2 1/3 yards muslin
- 1 3/4 yards black stripe for the border
- 2/3 yard black print for the binding
- 3 1/2 yards backing fabric
- 59" square of batting
- foundation paper (optional - see page 28)

Cutting

Dimensions include a 1/4" seam allowance.

- Cut 100: 3" squares, assorted prints, plaids, and stripes

From each brown print:

NOTE: Separate each group of 8 strips into 2 piles of 4.

- Cut 8: 3/4" x 4 1/2" strips
- Cut 8: 3/4" x 4" strips
- Cut 8: 3/4" x 3 1/2" strips

From the muslin:

- Cut 180: 1 1/2" x 4 1/2" strips
- Cut 200: 3/4" x 4" strips
- Cut 200: 3/4" x 3 1/2" strips
- Cut 200: 3/4" x 3" strips

From the assorted black prints:

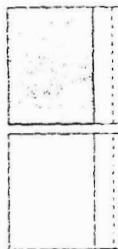
- Cut 81: 1 1/2" squares

Also:

- Cut 4: 3 1/4" x 58" strips, black stripe, for the border
- Cut 6: 2 1/2" x 40" strips, black print, for the binding

Directions

1. Stitch a 3/4" x 3" muslin strip to a 3" print square. Chain stitch a 3/4" x 3" muslin strip to each of the remaining 3" squares.



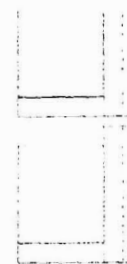
2. Clip the units apart.

3. Chain stitch 3/4" x 3" muslin strips to the opposite side of each square.

4. Clip the units apart and press the seam allowances toward the muslin. Trim the seam allowances to 3/16".



5. Chain stitch 3/4" x 3 1/2" brown print strips to the square units, as shown. Use only 4 strips of each brown print. Clip the units apart.



6. Chain stitch 3/4" x 3 1/2" matching brown print strips to the opposite side of each unit.



7. Clip the units apart and press the seam allowances toward the brown print. Trim the seam allowances to 3/16".

8. Chain stitch 3/4" x 3 1/2" muslin strips to the muslin sides of each unit. Press and trim, as before.

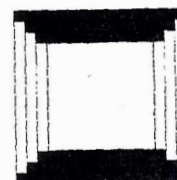


9. Chain stitch 3/4" x 4" matching brown print strips to each unit. Press and trim.



10. Chain stitch the 3/4" x 4" muslin strips to the muslin sides of each unit. Press and trim.

11. Chain stitch the 3/4" x 4 1/2" matching brown print strips to the remaining sides. Press and trim.



LOG CABIN QUILT

ca. 1870

64" x 72"
Wool and velvet

Quiltmaker Martha Virginia (Virgie) Morris Moore.
Made in Florence, Williamson County.
Owned by Mary Love Berryman.

SOMBER and disciplined, this Log Cabin quilt shows how repetition of simple images can produce a powerful artistic statement. In this, as in many other quilt designs, the nineteenth-century quiltmaker was far ahead of the painters of her day.

Patricia Mainardi, in *Feminism and Art History*, says that a comparison of the quilting art at that peak period with what was happening in painting in America at the same time would show that quiltmakers anticipated modern painting by at least 150 years. "A repeat pattern of cubes in space, for example, was known as 'Baby's Blocks' (to quiltmakers). The fact that it is more common for contemporary male artists to call this type of design by a scientific or mathematical name merely points up the different content this visual symbol evokes in different lives," she notes (p. 338).

Even as early as the 1920s, Ruth Finley, in *Old Patchwork Quilts and the Women Who Made Them*, called quilts "futuristic—in both color and form" and added, "... would it be heresy to suggest that modernistic art is reminiscent of folk-crafts, the creations of which have gone so completely out of memory as to seem now strikingly novel" (pp. 108–109).

Distancing the viewer from a quilt by displaying it on a wall or seeing it in a photograph can crystallize and give perspective to its inherent forms. This particular quilt is one in which such viewing better demonstrates its artistic command of light and dark than when viewed as traditionally used on a bed.

There were many variations on the Log Cabin quilt when this quiltmaker was working, and development of additional variations continues today. This subdued and dignified quilt is in the Courthouse Steps variation. Many courthouses in Texas were built with entrances on all four sides and steps leading up to each entrance. In this variation, the Log Cabin blocks are pieced so that the logs form the steps leading to the deep wine velvet center blocks, which represent the courthouse, in keeping with the tradition that Log Cabin blocks were centered by warm-hued colors. There is much use of wool in this quilt, and it is handpieced. It is bound simply and not backed.

Quiltmaker Martha Virginia (Virgie) Morris was born in 1847 in Winchester, Franklin County, Tennessee, and moved with her mother, brothers, and sisters to Travis County, Texas, after her father died in 1852. Two years later, they moved

to the head of Berry's Creek, near Florence, eighteen miles northwest of Georgetown, Williamson County.

She married a man who had fought in the Choctaw Grays, Company K, 15th Mississippi Infantry, C.S.A., in the Civil War and was wounded in the right leg in the battle of Shiloh. In the battle of Nashville, he lost his little finger and also received a bullet in his hip. Nevertheless, he walked 140 miles home to get his "hand trimmed" and receive treatment. After the war, he moved with his family in covered wagons to Florence, arriving on Christmas Day.

Virgie Morris and John Thomas Moore were married February 11, 1869. This quilt was part of her trousseau, an unusual selection because of its dark hues, but perhaps because of the rich, formal fabrics it was deemed suitable for a winter wedding. The couple had their first baby the next year and later moved to Ballinger, Runnels County, with their family, where they lived until Mrs. Moore's death on March 18, 1912.

The quilt was handed down in the family, and its current owner, Virgie Moore's great-granddaughter, Mary Love Berryman, was given it by her mother. Mrs. Berryman has the following obituary of the quiltmaker in her family papers:

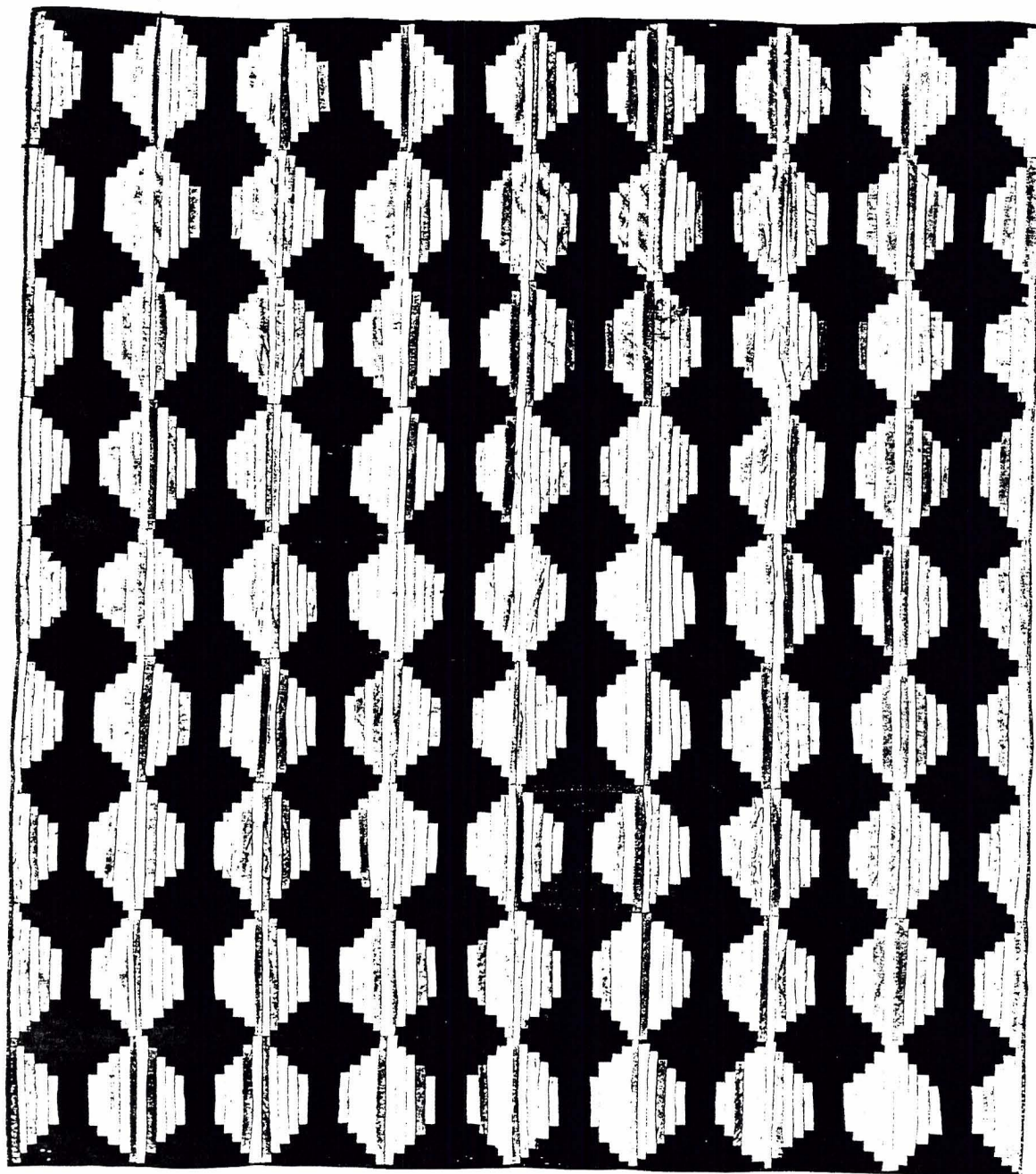
Mrs. Martha Virginia Moore, wife of T. J. Moore, died Monday morning at six o'clock at the home of her daughter, Mrs. A. S. Love. Age 64 years.

Mrs. Moore had been feeble for some time and her death was not unexpected, but leaves a sadness in the home where it occurred and among the many friends of the family. Deceased is survived by a loving husband who was at the bedside when the death angel removed from this world a life that had been spent in usefulness and transplanted it in a world where sorrow and sickness can not go, and where the loved ones shall meet again . . .

—Banner-Leader,
Ballinger, Texas
March 23, 1912



Martha Virginia (Virgie)
Morris Moore



LOG CABIN QUILT

64" x 72"
Wool and velvet

ca. 1870

Quiltmaker Martha Virginia (Virgie) Morris Moore.
Made in Florence, Williamson County.
Owned by Mary Love Berryman.

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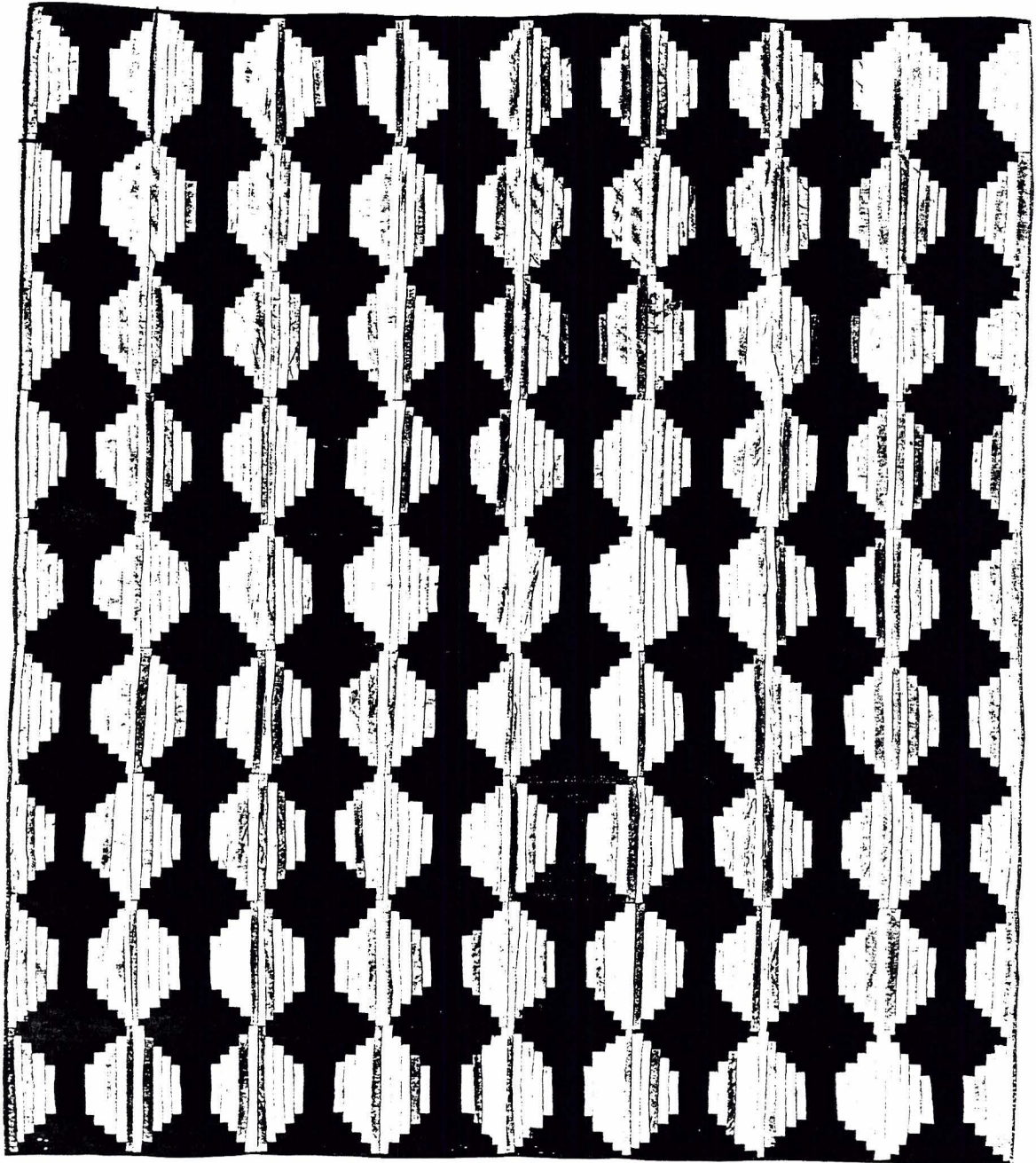
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—Banner-Leader,
Ballinger, Texas
March 23, 1912



Martha Virginia (Virgie)
Morris Moore



Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
REGISTRY
VA 1-282-126
EFFECTIVE DATE OF REGISTRATION
SEP 17 2004
Month Day Year

LATE CONTINUATION SHEET

1 Title of This Work ▼ "sew" many SPOOLS
NATURE OF THIS WORK ▼ See Instructions fabric design PATTERN
Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 NAME OF AUTHOR ▼ a JoAnn Pelletier
DATES OF BIRTH AND DEATH
Year Born ▼ 5/31/1938 Year Died ▼
Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No
Author's Nationality or Domicile
Name of Country USA
OR Citizen of USA
Domiciled in USA
Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonym? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NOTE
Under the law the author of a "work made for hire" is generally the employer not the employee (see instructions). For any part of this work that was made for hire check "Yes" in the space provided give the employer (or other person for whom the work was prepared) as "Author" of that part and leave the space for dates of birth and death blank.

Nature of Authorship Check appropriate box(es) See Instructions
☐ 3 Dimensional sculpture ☐ Map ☐ Technical drawing
☒ 2-Dimensional artwork pattern ☐ Photograph ☒ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work
Name of Author ▼ b
Dates of Birth and Death
Year Born ▼ Year Died ▼
Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No
Author's Nationality or Domicile
Name of Country
OR Citizen of
Domiciled in
Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonym? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es) See Instructions
☐ 3 Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2 Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3 Year in Which Creation of This Work Was Completed a 1993 This information must be given in all cases.
Date and Nation of First Publication of This Particular Work
Complete this information ONLY if this work has been published. Month JAN Day 21 Year 1993
Nation USA

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼
JoAnn Pelletier 41 Woolworth St Longmeadow MA 01106
Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright ▼
APPLICATION RECEIVED SEP 17 2004
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED SEP 17 2004
FUNDS RECEIVED

EXAMINED BY

FORM VA

CHECKED BY

☐ CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes" why is another registration being sought? (Check appropriate box) ▾a. ☐ This is the first published edition of a work previously registered in unpublished formb. ☒ This is the first application submitted by the author as copyright claimantc. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes" give: Previous Registration Number ▾

Year of Registration ▾

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work, complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates ▾

a 6
See instructions
before completing
this space.

b. Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed ▾

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office give name and number of Account

Name ▾

Account Number ▾

a

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent Name/Address/Apt/City/State/ZIP ▾

JoAnn Pelletier
41 Woolworth St
Longmeadow MA 01106

b

Area code and daytime telephone number

(413) 567-7146

Fax number

(413) 567-4258

Email

jojoann@comp3.net

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one ▸

☒ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of

Name of author or other copyright claimant or owner of exclusive right(s) ▾

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

Typed or printed name and date ▾ If this application gives a date of publication in space 3 do not sign and submit it before that date

JoAnn Pelletier

Date 9/14/2004

Handwritten signature (X) ▾

X JoAnn Pelletier

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will be
mailed in
window
envelope
to this
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Name ▾

JoAnn Pelletier

Number/Street/Apt ▾

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Because of copyright infringement laws
(and how the growing awareness of
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I FEEL THAT I MUST MAKE THE
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The LOG CABIN sampler blocks are
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your own personal use and
enjoyment - NOT for public
display or publication.

This also applies to "BONUS"
quilts made in class.

JoAnn Pelletier

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September 21, 2004

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SENDERS RECORD

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Ms. Christiane Meunier
Chitra Publications, Inc.
2 Public Avenue
Montrose, PA 18801-1220

Certified Article Number

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SENDERS RECORD

Re: Copyright Infringement

Dear Ms. Talbot and Ms. Meunier:

Please be advised that this office represents JoAnn Pelletier, of Longmeadow, Massachusetts. JoAnn is the owner of certain copywritten material as further described in this letter. It has come to our attention that you are using JoAnn's copywritten material consisting of a quilt pattern which you have called "Just Spooling Around" (the "Protected Design" or the "Pattern") without authority.

As you may know, by federal law, the owner of a copyright has the exclusive right to reproduce and distribute the copyrighted work. Accordingly, a validly copyrighted work is infringed when unauthorized reproductions of the copyrighted work have been made. JoAnn taught her spool Protected Design in quilting classes beginning in 1993. She disclosed the Pattern for the purpose of teaching her students. She made it clear to all of her students that they were not authorized to copy and distribute the Pattern, as it was her work of artistic expression. She did authorize each student to use the Pattern as a learning tool and to make a quilt for her

DOHERTY, WALLACE, PILLSBURY AND MURPHY, P.C.

Ms. Sandra T. Talbot
Ms. Christiane Meunier
September 21, 2004
Page 2

own use and enjoyment. Ms. Talbot threatened to distribute the Protected Design forcing JoAnn to disengage her from her class in September, 2000. In 2003, Ms. Talbot in fact distributed the Protected Design to Chitra Publications, Inc. representing it as her own, in violation of federal copyright law.

Accordingly, demand is made of Ms. Talbot as follows:

1. JoAnn demands that Ms. Talbot cease and desist claiming ownership of the Pattern and Protected Design.
2. JoAnn demands that Ms. Talbot you cease and desist distributing, copying and reproducing the Pattern and Protected Design.
3. JoAnn demands that Ms. Talbot cause to be published in Chitra Publications' next issue of Quiltworks Today and online the following written apology for a period of six months verbatim displayed in font size and legibility equal to that of the entire publication:

Sandra T. Talbot, has falsely claimed ownership of the "Just Spooling Around" protected design without authority of its rightful owner. Sandra T. Talbot apologizes for the use of the intellectual property of JoAnn Pelletier of Longmeadow, Massachusetts. JoAnn Pelletier is the creator and owner of the pattern for "Just Spooling Around".

4. JoAnn demands damages in the total amount of \$50,000.00.

This demand is supported by the following:

Copyright Infringement.

Federal law at 17 USC §102(a) states that copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.

JoAnn owns the copyright to the pictorial, graphic work consisting of the Pattern to all of the quilts which are her original works of artistic expression and protected as her intellectual property. JoAnn's spool quilt pattern is one that she designed independently over a period of many years. As soon as she sketched and wrote the Pattern on paper, her copyright subsists. Her documentary evidence supports that she wrote the Pattern many years ago. As the copyright

DOHERTY, WALLACE, PILLSBURY AND MURPHY, P.C.

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Page 3

owner of this artistic work, JoAnn has the exclusive right to reproduce and to distribute the Pattern and Protected Design (17 USC § 106). Because Ms. Talbot and Chitra have published, reproduced and distributed the Pattern and the Protected Design without JoAnn's authorization, you have both infringed JoAnn's copyright upon publication of the Protected Design and Pattern in Chitra Publications, Inc. Quiltworks Today. October/November, 2003 issue at pages 26 and 27 (the "magazine").

Subsequent to that unauthorized publication, you recently published, reproduced and distributed the Protected Design in a book entitled A Few of My Favorite Scrap Quilts also published by Chitra Publications, Inc. (the "book"). In fact, it is featured on the cover of the book, on page 3 in the book and the Pattern is duplicated in the book at pages 11 and 15 in violation of federal copyright law. You, Ms. Talbot, have held yourself out to be the owner of the artistic expression manifested in the Protected Design in both the magazine and the book when in fact you are not. You have published your photograph with JoAnn's quilt Pattern, falsely claiming credit for its design. You falsely informed Chitra Publications that you were the owner of the Protected Design and that no one else had any rights to the Protected Design, when you knew that to be false.

Not only have your actions been egregious, insulting and personally cruel, but you have violated federal and state law. Both you and Chitra have taken action in reckless disregard for the true owner's copyright notwithstanding actual notice of such right.

Chitra Publications, Inc. has reproduced, duplicated, published and distributed the Protected Design in violation of federal copyright law.

Chitra may attempt to claim that it relied to its detriment on the false claims of Ms. Talbot. Unfortunately for Chitra, detrimental reliance is no defense to copyright infringement. Accordingly, demand is made of Chitra as follows:

1. JoAnn demands that Chitra cease and desist from selling the book, remove the book immediately from the shelves of its retailers and from the Internet.
2. JoAnn demands that Chitra publish the written apology in its next magazine issue and on the Internet exactly as demanded above.
3. JoAnn demands that Chitra remove the magazine from the website and cease and desist sales of that issue of the magazine.
4. JoAnn demands damages in the total amount of \$50,000.00.

The magazine and book, although informational, are commercial. The publications developed and published by Chitra Publishing, Inc. are primarily for the purpose of generating

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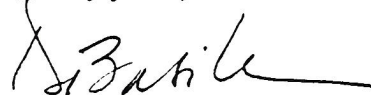
revenue for Chitra and promoting products used by quilters for financial gain. Chitra is hoping that consumers will be impressed with JoAnn's Protected Design quilt and buy the magazine or the book and all of the quilting materials from the advertisers of Chitra and from those retail outlets which sell Chitra's publications. Therefore, the publications are a form of commercial speech for the purpose of influencing consumers to buy its goods. It appears that the publications are adequately disseminated to the relevant purchasing public, since the publications are available over the Internet. Because the Chitra publications are available on-line at Chitra's website www.quilttownusa.com, it could be argued that consumers interested in purchasing quilting products would be likely go to the Chitra website, and encounter the Chitra publications. Thus, therefore, the Internet constitutes sufficient distribution and the Chitra website is a commercial publication.

The statements made in the publications are false and misleading. Ms. Talbot holds herself out as the owner of the Pattern and Protected Design when she is not. JoAnn shall prove that the statements made are literally false and as such can do nothing but mislead and confuse consumers.

JoAnn will not condone nor ignore this infringement and intends to hold both Ms. Talbot and Chitra Publications, Inc. legally accountable. JoAnn will seek fair and reasonable compensation for the improper use of her Protected Design and damages for infringement. Accordingly, JoAnn reiterates the demands set forth in this letter. Should either of you fail to comply with the demands completely and in a timely fashion in the sole opinion of JoAnn, JoAnn will pursue her legal remedies to the full extent of the law. Absent complete compliance with the demands made herein, JoAnn will initiate litigation in the United States District Court for the District of Massachusetts for statutory damages, actual damages equivalent to income received and sales generated by both parties as a result of this infringement and for all other rights and remedies available by all applicable state or federal law. Nothing herein shall be interpreted as a limitation of the rights and remedies available to JoAnn.

Please do not contact or attempt to contact JoAnn Pelletier. All communication regarding this matter must be made through the undersigned. Please confirm immediately upon receipt of this letter your prompt compliance with the demands herein.

Very truly yours,



Deborah A. Basile

DAB/cm

Enclosure

cc: JoAnn Pelletier



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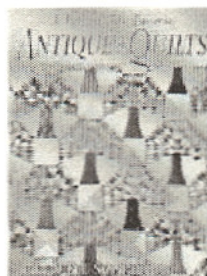
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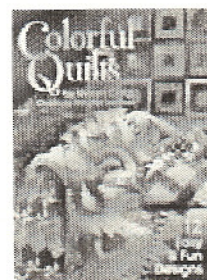
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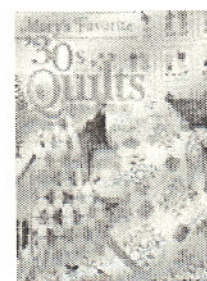
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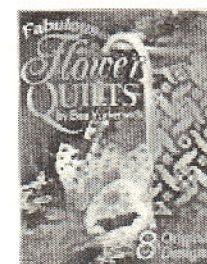
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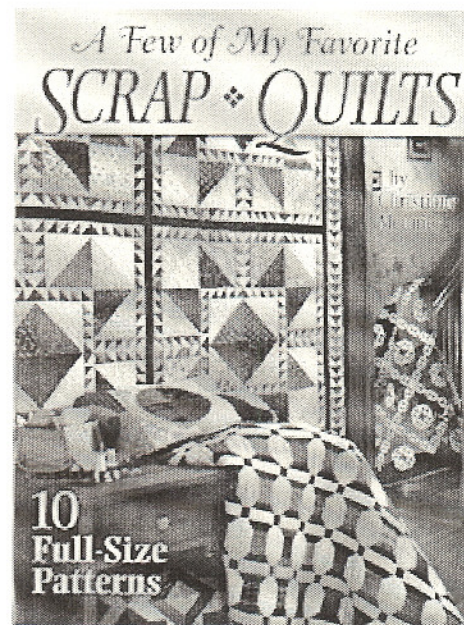
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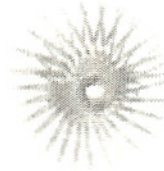
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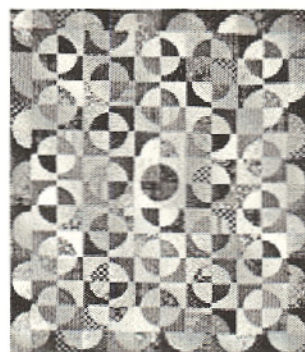
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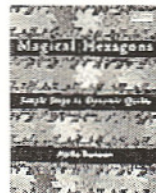
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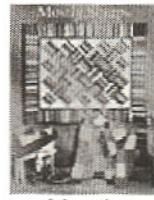
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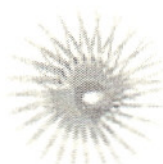
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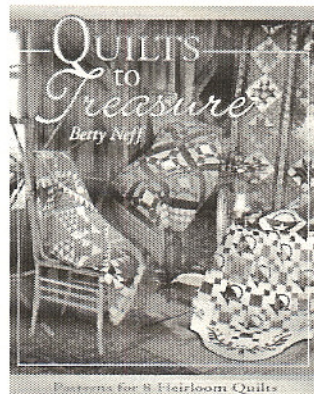
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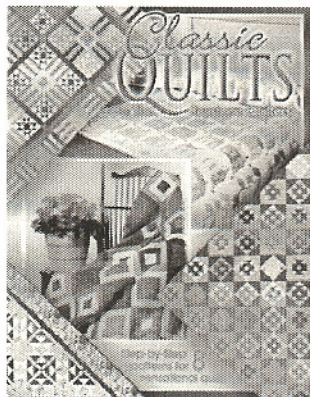
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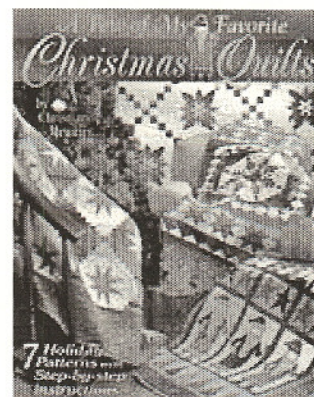
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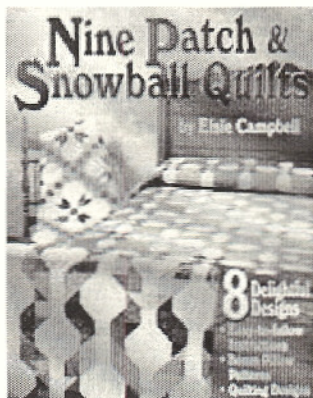
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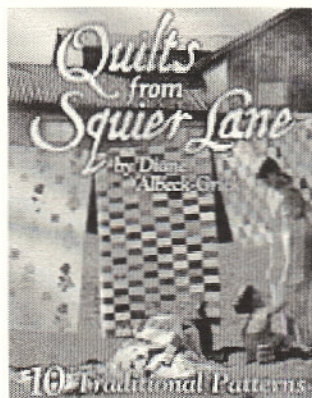
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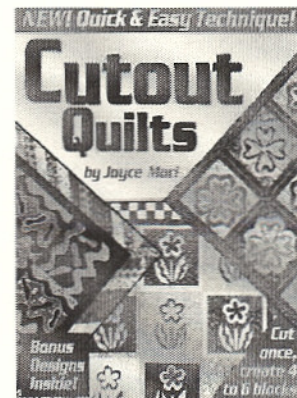
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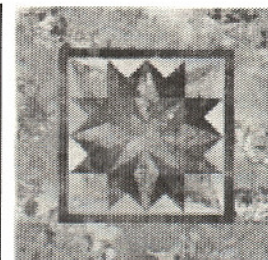
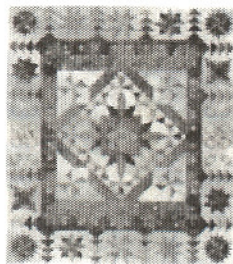


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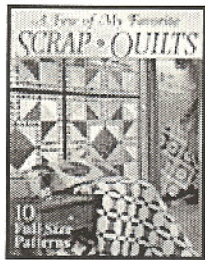
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A Few of My Favorite Scrap Quilts

Author: [Christiane Meunier](#)
 Format: Paperback
 Publication Date: July 2004
 Publisher: Chitra Pubns
 ISBN: 1885588585
 List Price: \$55.01

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Alibris	★★★★★ (1.9) [12 comments]	Ships in 2-3 days	\$25.50 (Used)	CA, MI, NV	Standard (4-14)	\$3.49	\$28.99 (Used)
Abebooks	★★★★★ (1.9) [17 comments]	In Stock	\$28.39 (Used)	- N/A -	Various (4-21)	\$3.50	\$31.89 (Used)

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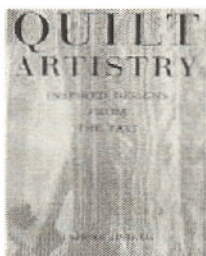
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Nieuwe aanwinsten maart 2005

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Quilt Artistry, Inspired Designs from the East, door Yoshiko Jinzenji. Uitgever: Kodansha. Mooi Japans boek met volop foto's om inspiratie op te doen. Veel intensief machinaal quiltwerk op naturelkleurige handgeverfde stoffen en quilts die doen denken aan oude oosterse tapijten. 128 blz. ISBN: 4-7700-2756-7, prijs ca. € 35,--

Focus on Batiks door Jan Bode Smiley. Uitgever: C & T. Originele batik stoffen hebben een heel eigen uitstraling. Ook in combinatie met handgeverfde en met 'gewone' stoffen geven ze net iets extra's. ISBN: 1-57120-230-7, prijs ca. € 27,--

Blühende Quilts door Ula Lenz. Uitgever: Bergtor Verlag. Duits boek (Engelse tekst op website www.lenzula.com) met nieuwe patronen met bloemen en planten en wat je verder in de tuin vindt, alles voor paper piecing. 96 blz. ISBN: 3-9806815-8-0, prijs ca. € 22,--

Star-Studded Quilts door Roxanne Carter. Uitgever: Martingale. De mogelijkheden met deze sterrenblokken zijn eindeloos. Alles met driehoeken en vierkanten, met instructies voor een snelle snij- en naaitechniek. Leuk voor een sampler, maar een kleiner werkje kan ook. 64 blz. ISBN: 1-56477-538-0, prijs ca. € 24,--

Photo Fun door Cyndy Lyle Rymer. Uitgever: C & T. Afdrukken van foto's door printer of scanner op stof openen nieuwe perspectieven voor heel persoonlijke quilts. Ook leuk om zo een heel eigen etiket te maken. 64 blz. ISBN: 1-57120-276-5, prijs ca. € 19,--

A Few of My Favorite Scrap Quilts door Christiane Meunier. Uitgever: Chitra. Veel van deze patronen zijn eerder gepubliceerd in Quilting Today en Traditional

Quilt Savvy, Fallert's Guide to Images on Fabric door Caryl Bryer Fallert. Uitgever: AQS. U kunt uw eigen stoffen bedrukken met afbeeldingen die u zelf op uw

Sensational Settings door Joan Hanson. Uitgever: Martingale. Er zijn meer mogelijkheden om van een stapel blokken een quilt samen te stellen dan op het

Quiltworks. Scrap quilts zijn altijd aantrekkelijk omdat er zoveel verschillende stoffen in verwerkt kunnen worden en je niet meteen rolletjes of halve meters nodig hebt. 32 blz. ISBN: 1-885588-58-5, prijs ca. € 18,--

inkjetprinter heeft geprint en misschien wel zelf ontworpen. Ook foto's kunt u zo afdrukken op stof. Door speciale vloeistoffen (Bubble Jet Set en Bubble Jet Rinse) worden de afbeeldingen onuitwasbaar. 126 blz. in een ringbandje, ISBN: 1-57432-842-5, prijs ca. € 26,--

eerste gezicht lijkt. Verwerking 'op de punt' is daar één van, zo ook afwisselen met andere gepatchte blokken of blokken van een bijpassende stof. Tips om blokken van ongelijke grootte samen te voegen. 80 blz. ISBN: 1-56477-521-6, prijs ca. € 25,--

Borders, Bindings & Edges, The Art of Finishing Your Quilt door Sally Collins. Uitgever: C & T. Goede suggesties voor medaillonquilt, waarbij vanuit het centrumblok rand na rand wordt toegevoegd. Veel aandacht voor de afwerking, bv. met koord, schulpjes e.d. 112 blz. ISBN: 1-57120-233-1, prijs ca. € 30,--

Debbie Mumm's Birdhouses for every Season, geschreven en uitgegeven door Debbie Mumm. Veel verschillende vogelhuisjes voor binnenshuis voor elk seizoen. Quilts, lopertjes, placemats enz. 112 blz. ISBN: 0-9707811-0-5, prijs ca. € 28,--

No-Sweat Flannel Quilts door Beth Garretson. Uitgever: Martingale. Flanellen stof in felle kleuren en met leuke motieven is heel goed te gebruiken in quilts, lekker warm is het in ieder geval. Met eenvoudige patronen. 64 blz. ISBN: 1-56477-540-2, prijs ca. € 24,--

From the Cover, samengesteld door Mary Leman Austin en Quilter's Newsletter Magazine. Uitgever: C&T. Alle quilts hebben op de voorkant van QNM gestaan. Van 15 stuks is er een uitgebreide werkbeschrijving. 112 blz. ISBN: 1-57120-246-3, prijs ca. € 34,--



One hundred Japanese Quilts. Uitgever: Tadanobu SETO Nihon Vogue.

Catalogus van de reizende tentoonstelling die dit voorjaar o.a. tijdens Quilt Expo in Den Haag te zien was en die veel belangstelling had. Een boek om eens rustig mee te gaan zitten, want dit zijn werkelijk topstukken.

Romantic Quilts samengesteld uit quilts die eerder gepubliceerd werden in Australian Patchwork & Quilting Magazine. Klassieke patronen, uitgevoerd in zachte kleuren. Uitgever: Martingale. 112 blz. ISBN: 1-56477-536-4, prijs ca. € 30,--

More Nickel Quilts door Pat Speth. Uitgever: Martingale. 20 patronen voor quilts, alle gemaakt met vierkante lapjes van 13 x 13 cm. Hoe meer verschillende hoe beter en ruilen mag. 112 blz. ISBN:

Bold, Black and Beautiful Quilts door Debby Kratovil. Uitgever: AQS. Felle kleuren in combinatie met zwart geven een dramatisch effect aan uw quilt. Traditionele eenvoudige patronen krijgen



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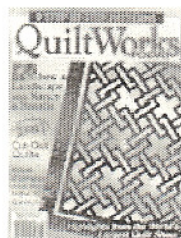
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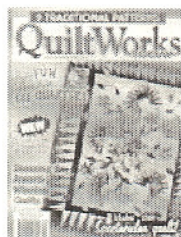


QuiltWorks Today #10 (October/November 2004)

Features: Featured Teacher: Meet Natalie Sewell & Nancy Zieman, Private Workshop: Partners in Design, Design Challenge: New York Beauty, Garden Flowers and more...

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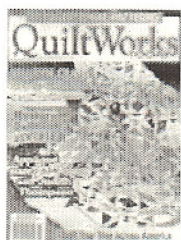


QuiltWorks Today #9 (Aug/Sept 04)

Features: Meet Judy Niemeyer, Private Workshop: Wild Flowers, Cutting Fabric for Optimum Accuracy, Ask the Expert, and more...

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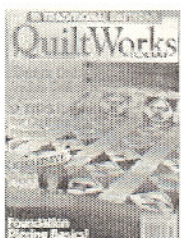


QuiltWorks Today #6 (Feb/Mar 2004)

Patterns: Not All the Reds in my Life, Ring around the "G" Block, Snowman Hollow, Through the Ages, All I Wanted was a Jacob's Ladder, My Eternity Garden, Almost Orange

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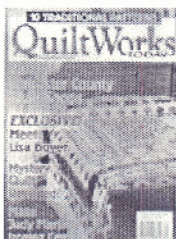


QuiltWorks Today #4 (October/November 2003)

Patterns: A Wild Northwind, Susan B. Anthony, Just Spooling Around, Washington's Cherry Baskets, A Flash of Green, Granola Bars, Ohio Valley Musings: A Series Quilt. More...

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Patterns: Summer Retreat, Square Dance, Ohio Valley
Musings: A Series Quilt, Part I, Spring Flowers, Welcome
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